No. 83-1093

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

STATE OF MICHIGAN

Petitioner,

-vs-

GREGORY DEVAL PARKER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

STATE APPELLATE DEFENDER OFFICE

BY: JOHN NUSSBAUMER
Assistant Defender
Third Floor, North Tower
1200 Sixth Street
Detroit, Michigan 48226
(313) 256-2814

WRITTEN BY: MARDI CRAWFORD

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE MICHIGAN SUPREME COURT'S HOLDING THAT THE WARRANTLESS ARREST OF RESPONDENT IN HIS ROOM SEVERAL HOURS AFTER THE OFFENSE VIOLATED THE FOURTH AMENDMENT BECAUSE NOT EXCUSED BY EXIGENT CIRCUMSTANCES CONFLICTS WITH FEDERAL CASELAW?

Defendant-Appellant answers, "No".

II. WHETHER THE PENDENCY OF PLEADINGS IN THE MICHIGAN SUPREME COURT CONCERNING AN INSTRUCTIONAL ERROR AS TO THE ELEMENTS OF THE CRIME MAKES THIS CASE AN INAPPROPRIATE VEHICLE FOR CONSIDERATION BY THIS COURT OF THE STANDARDS GOVERNING WARRANTLESS ENTRY AND ARREST?

Defendant-Appellant answers, "Yes".

TABLE OF CONTENTS

mec*mec3049br3*01-24-84
PARKER, GREGORY

INDEX OF AUTHORITIES

CASES

COUNTERSTATEMENT OF THE CASE

The incident underlying the armed robbery and first degree (armed) criminal sexual conduct charges against Respondent Gregory Parker occurred at about 9:00 p.m. The complainant said an assailant sprayed her in the face with some substance, threatened to stab her if she did not do as he said, took $12 from her purse, and forced her to drive to another location where he raped her following a struggle (T 140-157). After the police received information from complainant, a description of the alleged assailant was broadcast at about 9:30 p.m. Information about the case was provided to officers of the Major Crimes Mobile Unit at about 11:45 p.m. with instructions to attempt the arrest of the suspect (T 6).

Before seeking to effectuate an arrest, the officers of the Major Crimes Mobile Unit went to the 13th precinct to complete work on their previous case. After completing that, they began to search for the suspect in this case. They went to an address noted in a wallet found at the scene, determined by telephone that Gregory Parker (whose name was likewise noted in the wallet) no longer lived there and went to an address provided to them in the phone call. When that address proved nonexistent, a second phone call was made. (The phone calls were made from unit headquarters after the unit officers called in) (T 6-9).

As a result of the second call, the officers went to a boarding house, arriving at about 2:45 a.m. (T 19). A person identifying himself as the owner of the building informed the officers that Gregory Parker lived there, but was not at home. According to police testimony, the owner then knocked on the door of room #11. Getting no response the owner went to his own apartment, got a key, came back and opened room #11. Police observed someone sleeping in a bed. At that point the police entered the room with guns drawn; one officer placed his gun "in very close proximity to the subject's head" and awakened him.

After the subject complied with orders to remove his hand from under the pillow and sit up, the officer observed that the subject, Respondent Parker, had a laceration under one eye and generally answered the desription of the suspect in this case. Respondent was then placed under arrest (T 10-14).

The officers confiscated $12 and a fingernail file from clothing that Respondent asked to put on (T 14-15). The defense motion to suppress the evidence thus obtained was denied by the trial court, which relied heavily on the fact that there had been "peaceful entry" of Respondent's room (T 49-50).

The unconstitutionality of the arrest was raised in the Michigan Court of Appeals along with other issues including the lack of evidence that Respondent had been armed at the time of the alleged robbery and criminal sexual conduct. That court upheld Respondent's convictions in two opinions. The Michigan Supreme Court granted leave to appeal, and reversed the conviction finding that there had been no showing of exigent circumstances that would excuse the warrantless arrest of Respondent in his boarding room.

As to Respondent's assertion that there was insufficient evidence of his being armed, the Michigan Supreme Court stated that "under proper instructions a jury verdict of guilty on this evidence would not be overturned". The Court noted that the instructions here were patently in error, but declined to reverse where the question of jury instructions had not been raised (7c of Petition for Certiorari).

As petitioner acknowledges in the "Opinions Below" section of his petition, petitioner has filed an Application for Clarification of Opinion in the Michigan Supreme Court. In the answer to such application, Respondent has argued that the application is transparently a request for rehearing (filed untimely). Respondent has further argued that if the Michigan Supreme Court does modify its opinion in any way, such modification should include reversal of Respondent's convictions

on the instructional error noted by that Court (3a of Appendix, infra).

REASONS FOR DENYING THE WRIT

I. THE MICHIGAN SUPREME COURT'S HOLDING THAT THE WARRANTLESS ARREST OF RESPONDENT IN HIS ROOM SEVERAL HOURS AFTER THE OFFENSE VIOLATED THE FOURTH AMENDMENT BECAUSE NOT EXCUSED BY EXIGENT CIRCUMSTANCES CONFLICTS WITH FEDERAL CASELAW.

The District of Columbia Circuit Court, en banc, held in Dorman v United States, 140 US App DC 313; 435 F2d 385 (CADC 1970) that warrantless entry into a dwelling to effectuate an arrest is per se unreasonable absent certain "exigent circumstances." The prosecution here relies on the factors set forth in Dorman to show that exigent circumstances justify the warrantless entry into Respondent's abode. Such factors, listed by Petitioner (p 10), have often been repeated, see United States v Reed 572 F2d 412 (CA 2, 1978), noted in the Michigan Supreme Court's opinion as a precurser of Payton v New York, 455 US 573; 100 SCt 1371; 63 LEd 2d 639 (1980) (2c of Petition for Certiorari). However, as noted by the Seventh Circuit in United States v Acevedo, 627 F2d 68, 70 (CA 7 1980), the Dorman factors are not the final word in analysis of any given warrantless entry and arrest:

> "...Although some or all of the factors...may be relevant to a particular case, the limitless array of factual settings that may arise caution against a checklist-type analysis. See United States v. Adams, 621 F.2d 41, at 44 (1st Cir. 1980). Dorman better serves as a guide to resolution of the underlying pragmatic question whether the exceedingly strong privacy interest in one's residence is outweighed by the risk that delay will engender injury, destruction of evidence, or escape. Since the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed,' United States v. United States District Court, 407 U.S. 297, 313, 92 S.Ct. 2125, 2134, 32 L.Ed.2d 752 (1972), those asserting the propriety of their entry bear a heavy burden of showing they had an urgent need to cross the threshold without a warrant."

Even under the rote application of the Dorman factors proferred by Petitioner, it is clear that the prosecution here has failed to meet the heavy burden of showing an urgent need to cross Respondent's threshold with no warrant.1/

There was not, at the time officers arrived at Respondent Parker's boarding house or at the time they stood before his door, probable cause to believe the alleged assailant was in the room. Unlike the officers in Dorman, where the defendant had been positively identified as the person who had committed a crime of violence (435 F2d at 393), the officers here did not know if the wallet found on the scene contained the name of the suspect or was a decoy. The officers did not decide to arrest Respondent until they had entered the room, been informed that the person therein bore the name contained in the wallet found at the scene, and observed that Respondent matched the physical description of the alleged assailant. The entry, then, was for further investigation rather than to effectuate an arrest based on probable cause, which is the third Dorman factor.

Where the entry of the officers was based on such need for further investigation, the officers had no reasonable belief that entering room #11 would result in immediate apprehension of the suspect (the fourth Dorman factor). Not only were they unsure that the person whose name was found at the scene was in fact involved in the incident, they had no reason to believe anyone was in room #11 until the door was opened. The owner had informed them that Gregory Parker was not home and had knocked on the door, receiving no response. This distinguishes this case from Dorman, where police heard a noise from a back room and entered in the belief that the defendant was hiding, 435

1/ Petitioner has not and could not dispute that Payton v New York, supra, and the Fourth Amendment apply to a boarding house situation. This Court has long recognized occupants of such lodgings are entitled to constitutional protection against unreasonable searches and seizures, Stover v California, 376 US 483, 490; 84 SCt 889; 11 LEd 2d 856 (1964).

F2d at 388. Furthermore, Dorman states that while the police had no special knowledge the defendant was home, it was reasonable to look for him there late at night, F2d at 393. Here, once officers were told that Gregory Parker was not home, any reasonableness of looking for him in his room without a warrant vanished.

Four officers were present. They could have easily secured the area and sought a warrant to search the room for evidence,2/ see United States v Montanto, 613 F2d 147, 153 (CA 6 1980). Even more reasonably, one officer could have set up a "stake-out" and awaited Gregory Parker's arrival while the others returned to the streets to seek the perpetrator elsewhere.

The fifth Dorman factor is whether there existed at the time of the entry a "likelihood that the suspect will escape if not swiftly apprehended", 435 F2d at 393. In upholding the entry in Dorman, the Court noted that the defendant had dropped papers bearing his name at the scene of the crime. It is true that a wallet containing Respondent Parker's name was similarly left at the scene here. However, Dorman weighs against approval of the warrantless entry here. The Court noted that the four-hour delay there offset somewhat the possibility that the suspect would escape when noticing that his papers had been left behind; here, the delay was even longer. More importantly, the Dorman Court noted that if the delay had been of police making, the showing of reasonableness would have been undercut, 435 F2d at 393- 394. In this case, the police delegated the arrest of the suspect (two hours after a description of the perpetrator was broadcast) to a unit that then went to a precinct to complete work on another case before beginning to look for the person they were to arrest. The police had time to seek a warrant if they

---

2/ Such warrant would likely have been denied for lack of probable cause to believe that any evidence of the crime could be found there, based on the facts known prior to actual entry of Respondent's room.

had time to work on other cases; that they chose not to seek a warrant may demonstrate that they knew they did not have probable cause. In any event, most of the delay here was due to police action (or inaction).

In ruling that the warrantless entry was permissible, the trial court relied heavily on the 6th Dorman factor (how the entry was made), finding the entry here "peaceful" (T 73). The Dorman Court had noted that the permissible entry there was "made peacefully, and after announcement of purpose", 435 F2d at 394. Police here advanced upon Respondent Parker while he slept, without announcement of purpose and without consent[3/], and put a gun in "close proximity" to his head. Such armed, unannounced police entry into a sleeping man's room is not peaceful any more than a beseiged town is peaceful when there is a lull in actual shooting.

The offenses in question were of a serious and violent nature, fulfilling the first Dorman factor for finding exigent circumstances. However, while there had been some indication that the alleged assailant had a knife, he had not used or even exhibited a knife during the incident itself. Furthermore, a knife that cannot be used to shoot through doors or windows provides little basis to assume that a suspect will become increasingly dangerous to officers approaching a location to identify the suspect, secure the area and/or arrest the suspect. Therefore, consideration of the second Dorman factor does not merit a finding of exigent circumstances here.

When a warrantless entry is made late at night, the hour cuts both ways in analyzing the reasonableness of such entry. On the one hand, it may be more difficult, or take longer, to get a warrant at night.[4/] "On the other hand, the fact that an entry

---

3/ In the state appellate courts, Respondent briefed in great detail the lack of proper third party consent. As that has not been briefed by petitioner in this Court, Respondent has not addressed the issue, but has in no way abandoned such position.

4/ Under Michigan law, magistrates are on duty at all times for purposes of arraignment, People v Hamilton, 359 Mich

(Footnote Continued on Next Page)

is made at night raises particular concern over its reasonableness", 435 F2d at 393. The officers here could have applied for an arrest warrant before completing the work on their other case; a judicial determination of reasonableness could have been made with little delay beyond what occurred anyway. The prosecutor's inventive scenario in which the police repeatedly seek warrants and wind up still having to make a warrantless entry and arrest ignores certain major facts. If an arrest warrant had been obtained prior to police arrival at the address noted in the wallet, the change in address would not have vitiated the arrest warrant.5/ The fact that Respondent was not found at the address shown in the wallet would have vitiated a search warrant for that location if one had been obtained, but as already noted, when police determined that Gregory Parker did rent the room in question, they had enough personnel present to secure the area while a search warrant for that location was obtained. This procedure would have caused some delay but would not have lessened the police opportunity to get the evidence and/or suspect they sought.

Any difficulties the police might have faced in getting a judicial decision on a warrant request were not of a magnitude to justify the warrantless invasion of Respondent's home. The sanctity and privacy of one's home, the right of a person to be free of unreasonable governmental intrusion in that home, are at the core of the Fourth Amendment, as this Court has recently reaffirmed, Payton v New York, supra. Petitioner here has failed to carry its burden of showing exigent circumstances.

(Footnote Continued From Previous Page)

410, 417; 102 NW2d 738 (1960). No less are they on duty for purposes of determining the validity of a warrant request.

5/ Of course, it is Respondent's position that no arrest warrant could have been obtained because there was not probable cause to arrest Respondent until the police determined that he matched the general description of the alleged assailant.

Petitioner's efforts to distinguish the federal cases relied on by the Michigan Supreme Court6/ are not persuasive, and Petitioner's insistence that Dorman, supra requires a different result has herein been shown meritless. The decision of the Michigan Supreme Court was correct, and no important federal question has been made out.

II. THE PENDENCY OF PLEADINGS IN THE MICHIGAN SUPREME COURT CONCERNING AN INSTRUCTIONAL ERROR AS TO THE ELEMENTS OF THE CRIME MAKES THIS CASE AN INAPPROPRIATE VEHICLE FOR CONSIDERATION BY THIS COURT OF THE STANDARDS GOVERNING WARRANTLESS ENTRY AND ARREST.

If the Michigan Supreme Court does modify the opinion issued in this case, and adopts the changes urged by Respondent in his Answer to Application for Clarification of Opinion, there will be independant and adequate state grounds for reversal of Respondent's conviction, vitiating any need for review of the issue raised herein by Petitioner, Fox Film Corp. v Muller, 296 US 207, 210; 56 SCt 183; 80 LEd 158, 159 (1935). Furthermore, even if this Court grants the relief sought by Petitioner, Respondent will move in the trial court for a new trial based on the Michigan Supreme Court's finding that a the jury instructions on the element of being armed were "patently in error." (7c). The posture of this case is such that review by this Court of the federal issue is unwarranted.

6/ United States v Houle, 603 F2d 1297 (CA 8 1979) and Niro v United States, 388 F2d 535 (CA 1 1968).

CONCLUSION

For these reasons, Respondent respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

By: _____

JOHN NUSSBAUMER
Assistant Defender
1200 Sixth Avenue
Third Floor - North Tower
Detroit, Michigan 48226
(313) 256-2814

Written By: _____
MARDI CRAWFORD

Dated: January 24, 1984

APPENDIX

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

-vs-

GREGORY PARKER,

Defendant-Appellant.

Supreme Court No. 66028

Court of Appeals No. 78-4174

Lower Court No. 78-01196

WAYNE COUNTY PROSECUTOR'S OFFICE
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

ANSWER TO APPLICATION FOR CLARIFICATION OF OPINION

AFFIDAVIT

PROOF OF SERVICE

*****

STATE APPELLATE DEFENDER OFFICE

BY: MARDI CRAWFORD (P 28583)
Assistant Defender
Third Floor, North Tower
1200 Sixth Street
Detroit, Michigan 48226
(313) 256-2814

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,
-vs-
GREGORY PARKER,
Defendant-Appellant.

Supreme Court No. 66028
Court of Appeals No. 78-4174
Lower Court No. 78-01196

ANSWER TO APPLICATION FOR CLARIFICATION OF OPINION

NOW COMES Defendant-Appellant GREGORY PARKER, through his attorneys, the State Appellate Defender Office, by Mardi Crawford, and answers the prosecutor's Application for Clarification of Opinion as follows:

1. This Court's reversal of Defendant Parker's convictions on October 24, 1983 is admitted.

2. Defendant agrees that this Court discussed the evidentiary support of the armed robbery conviction, and notes the Court also considered the evidentiary support of the CSC I conviction. Defendant disagrees with the rest of the prosecutor's assertions as to and interpretations of the Court's opinion:

A. This Court's opinion makes quite clear that under the armed robbery statute there is no separate basis for supporting an armed robbery charge where the victim believes that a weapon is possessed but no evidence of such possession is offered:

> "To convict, the factfinder must make the determination that at the time of the robbery the assailant was in fact armed with something and not just that the victim thought he was armed. The determination must be based on the evidence." opin p 6.

B. The Court's analysis of this issue was not dicta--the question of evidentiary support for the charges had been raised, and if insufficient evidence was found, retrial

would be barred. Reversal on the issue of Mr. Parker's illegal arrest alone does not bar retrial, so that a final determination of the sufficieny question is necessary to dispostion of this case.

3. Much of the prosecutor's application is transparently a request for rehearing and a change of the Court's substantive decision rather than for "clarification." The pleading was filed well over the 20-day limit set in GCR 864.4 for such motions. Furthermore, the prosecutor presents no arguments that warrant rehearing.

4. As was set forth in detail in the Brief on Appeal and at oral argument, the prosecutor's recurring assertion that the facts here support a finding of the existence of a weapon even aside from the defendant's alleged words is not borne out by the trial record (Defendant's Brief on Appeal, p 27-29).

5. Should this Court be inclined to modify its opinion, Defendant Parker suggests that the following changes are warranted:

A. Corroborative evidence of the existence of a weapon should be required to support the conviction of an accused who, having made statements about the existence of a weapon at the time of the offense, is charged with being "armed":

i. The Court has said that a charge of armed robbery (or CSC I) can, under proper instruction, be supported by evidence that the defendant made a statement that he would use a weapon if the victim did not obey his commands (opin p 6-7). Apparantly, the Court is saying that a jury can determine, from no more than an accused's words, between a situation where an unarmed robber bluffs about having a weapon and the situation where an armed robber refers to an existing weapon.

ii. The Court is correct in finding that an unarmed robber cannot be legitimately punished under the statutes in question for having been armed. But the Court asks too much of jurors in holding that words alone can support a conviction

for armed robbery if the jury believes (independant of the victim's belief) that an accused who makes statements about a weapon was in fact armed. Defendant Parker urges this Court to hold that some evidence of the existence of a weapon apart from the words of the robber is needed to support a conviction of armed robbery (or armed CSC I).

B. The Court should sua sponte order reversal on the instructional error noted by the Court:

i. This Court may grant such relief as a case before it requires, GCR 1963, 865(7).

ii. In its consideration of the trial which resulted in Mr. Parker's conviction, this Court noted error in the instructions to the jury, in that the jury was not properly instructed on the "armed" element of armed robbery and CSC I as charged (opin p 7).

iii. It would be fundamentally unfair for a conviction to be sustained in the fact of such improper instruction regardless of whether defense counsel raised such issue (see People v Liggett, 378 Mich 706, 714; 148 NW2d 784 (1967)), this Court should sua sponte order reversal on this error.

C. The failure of defense counsel to seek the exclusion of the accused's prior record should be found to constitute ineffective assistence of counsel on the facts of this case:

i. The Court's opinion, stating that trial counsel's actions with regard to admission of Mr. Parker's prior convictions did not amount to ineffective assistance of counsel (but was not a strategy the Court recommended for retrial), is of no guidance to trial counsel faced with a similar case (and in no way assists appellate counsel for Mr. Parker in advising her client as to what has and will transpire in his case).

ii. Specifically, the Court failed to refute the language of Judge Maher dissenting in People v McShan, 120 Mich

App 496, 504-506; 327 NW2d 509 (1982) lv den 417 Mich 1060 (1983), cited in the Supplemental Brief filed on behalf of Mr. Parker, which persuasively asserts that actions such as that of trial counsel here cannot be fairly characterized as "trial strategy."

iii. Defendant urges this Court to reconsider the facts of this case, the language of Judge Maher's opinion, and the prejudicial nature of impeachment by prior convictions as argued in Defendant's Brief on Appeal and Supplemental Brief, and to hold that trial counsel's actions did constitute error.

D. The Court of Appeals reliance on People v Mearl Jones, 98 Mich App 421; 296 NW2d 268 (1980) should be disapproved:

i. This Court having declined to address the wisdom of impeachment by prior convictions in general and having refused to reverse on the admission of the particular prior convictions here involved, the Court of Appeals opinion at 100 Mich App 406 (1980), relying on Jones, supra, may be seen as remaining viable law.

ii. Surely this Court does not mean, by its silence, to allow a panel of the Court of Appeals to subvert the goals of People v Jackson, 391 Mich 323; 217 NW2d 22 (1974), People v Baldwin, 405 Mich 550; 275 NW2d 253 (1979) and their progeny.

iii. As set out at length in prior pleadings, the Jones majority opinion does just that:

This Court should, minimally, approve the concurring opinion of then-Judge, now Justice Cavanagh and disavow the "General Observations" of Jones:

> "M.F. Cavanagh, J. (concurring). I concur with my brothers that defendant's conviction should be affirmed. I so so separately, however, because I do not agree with the majority's "Some General Observations" of the MRE 690(a) question. The statement by the majority that, "Perjury occurs often in criminal trials, especially by the defendant who has the most to gain by it", is a generalization which I feel is

> factually unsound and hardly an appropriate guideline for those charged with the responsibility of rendering an impartial determination of guilt or innocence. As I find no abuse of discretion in the trial court's admission of evidence of prior convictions in this case, I would affirm." 98 Mich App at 435.

WHEREFORE, Defendant-Appellant respectfully asks this Honorable Court to REJECT those modifications of the previously-issued opinion requested by the prosecutor and to ADOPT the changes suggested herein.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

By:_____

Mardi Crawford (P 28583)
Assistant Defender
1200 Sixth Avenue
Third Floor, North Tower
Detroit, Michigan 48226
(313) 256-2814

DATED: November 23, 1983

No. 83-1093

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

STATE OF MICHIGAN

Petitioner,

-vs-

GREGORY DEVAL PARKER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

AFFIDAVIT OF INDIGENCY

PROOF OF SERVICE

STATE APPELLATE DEFENDER OFFICE

BY: JOHN NUSSBAUMER
Assistant Defender
Third Floor, North Tower
1200 Sixth Street
Detroit, Michigan 48226
(313) 256-2814

WRITTEN BY: MARDI CRAWFORD

No. 83-1093

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

STATE OF MICHIGAN

Petitioner,

-vs-

GREGORY DEVAL PARKER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, Gregory Parker, is an inmate in the Wayne County Jail in Detroit, Michigan. He asks leave to file the attached Brief in Opposition to a Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan and to proceed in forma pauperis pursuant to Rule 46.

The respondent's affidavit in support of this motion is attached hereto. He has been indigent and represented by appointed counsel during state court proceedings in this case.

STATE APPELLATE DEFENDER OFFICE

Respectfully submitted,

BY: _____

JOHN NUSSBAUMER (P 27422)
Assistant Defender
Third Floor, North Tower
1200 Sixth Street
Detroit, Michigan 48226
(313) 256-2814

WRITTEN BY: _____

MARDI CRAWFORD (P/28583)

DATED: January 24, 1984

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1983

No. _____

THE PEOPLE OF THE STATE OF MICHIGAN

Petitioner,

-vs-

GREGORY DEVAL PARKER,

Respondent.

---/

AFFIDAVIT OF INDIGENCY

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, GREGORY DEVAL PARKER, being first duly sworn, according to law, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that I have proceeded with appointed counsel in the state courts, having there been found indigent.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? NO

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. N.A.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. $3/hour

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months. N.A.

3. Do you own any cash or checking or savings account? Yes

a. If the answer is yes, state the total value of the items owned. $260-

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state it approximate value. —

5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Gregory DeVal Parker
GREGORY DEVAL PARKER

Subscribed and sworn to before me
this 6 day of January, 1984.

Michael B. Batchelor
Notary Public, Wayne County, Michigan
My commission expires:

MICHAEL B. BATCHELOR
Notary Public, Wayne County, Mich.
My Commission Expires May 9, 1984

No. 83-1093

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

STATE OF MICHIGAN

Petitioner,

-vs-

GREGORY DEVAL PARKER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

PROOF OF SERVICE

I, JOHN NUSSBAUMER, being first duly sworn, depose and say that on January 24, 1984, I placed Respondent's Motion For Leave to Proceed In Forma Pauperis, Affidavit of Indigency, Brief in Opposition, and Proof of Service in the United States Mail with proper first class postage affixed and addressed to:

A. George Best
Wayne County Prosecutor
Frank Murphy Hall of Justice
1441 St. Antoine
Detroit, MI 48226
(1 copy)

Clerk,
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20534
(Original and 9 copies)

JOHN NUSSBAUMER

Subscribed and sworn to before me
this 24th day of January, 1984.

AMANDA L. SMITH, Notary Public
Wayne County, Michigan
My Commission Expires: 10/6/87

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. 83-1093

PEOPLE OF THE STATE OF MICHIGAN (Petitioner or Appellant) vs. GREGORY PARKER (Respondent or Appellee)

The Clerk will enter my appearance as Counsel of Record for GREGORY PARKER

(Please list names of all parties represented)

who IN THIS COURT is ☐ Petitioner(s) ☒ Respondent(s) ☐ Amicus Curiae ☐ Appellant(s) ☐ Appellee(s)

I certify that I am a member of the Bar of the Supreme Court of the United States:

Signature _____

(Type or print) Name JOHN NUSSBAUMER

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm STATE APPELLATE DEFENDER OFFICE

Address THIRD FLOOR, NORTH TOWER, 1200 6th AVENUE

City & State DETROIT, MICHIGAN Zip 48226

Phone (313) 256-2814

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE. THAT ATTORNEY WILL BE THE ONLY ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES MAY FILE AN APPEARANCE FORM.

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED.

CO-78A